



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 8, 2003

Terrence V. Donahue
5448 Fish Hatchery Rd
Mackay, ID 83251

CERTIFIED MAIL

Re: Consent Order and Agreement
Notice of Violation Dated July 10, 2003

RECEIVED

SEP 15 2003

Department of Water Resources
Eastern Region

Dear Mr. Donahue,

Pursuant to our meeting on September 3, 2003, please find enclosed a Consent Order and Agreement regarding the Notice of Violation dated July 10, 2003 that the Idaho Department of Water Resources sent to you. Note the terms of the agreement and all compliance dates and fees or civil penalties stipulated in the attached order.

Please carefully review and consider the terms and conditions of this proposed order and agreement. If you agree with the terms and conditions, please sign the document and return it directly to me as soon as possible. If you have concerns or questions about the proposed order and agreement, or if you wish to propose revisions or provide other input, call me directly or submit written comments to me at the office listed on this letterhead.

I look forward to your prompt reply and a final resolution of this matter.

Respectfully,

Tim Luke
Water Distribution Section

Cc: Bob Duke, Watermaster, Water District 34
IDWR Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO
CONSENT ORDER AND AGREEMENT

In the matter of Notice of Violation and Cease and Desist Order dated July 10, 2003, issued to Terrence Donahue and Carol Donahue, pursuant to Section 42-1701B, Idaho Code.

Findings of Fact

- 1) Terrence Donahue and Carol Donahue (Donahue) are the owners of Water Right 34-00773, which has four legal points of diversion from the Big Lost River and Parsons Creek. One of these points of diversion is located in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 14, Township 8 North, Range 22 East, B.M. There are no other surface water rights of record with a point of diversion at this location. This point of diversion is designated as station 13122950, Donahue 2, on the attached map.
- 2) Through an administrative order dated December 6, 2001, Donahue was given notice by the Idaho Department of Water Resources (Department) of the requirement to install and maintain acceptable lockable controlling works and measuring devices on all diversions from the Big Lost River and Parsons Creek.
- 3) It has been documented by the Idaho Department of Water Resources (Department) that water was diverted or flowing to the ditch at the above referenced location on June 20, 2003, without the required lockable controlling works and measuring device.
- 4) The Department held a compliance conference with Donahue on September 3, 2003, whereby Donahue explained that they did not intentionally divert water at the above referenced location, and that Donahue did not use water from this diversion ditch for irrigation during 2003.

The Department held a compliance conference with Donahue on September 3, 2003. It is hereby ordered and agreed that:

Terms of Agreement

- 1) Donahue agrees to install lockable controlling works and a measuring device on the diversion from Parsons Creek located in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 14, Township 8 North, Range 22 East. Donahue will construct and maintain these structures such that they are acceptable to the Department.

- 2) Donahue agrees to complete installation of the lockable controlling works and measuring device by April 1, 2004 to allow the Department or Watermaster to inspect the structures prior to the beginning of the irrigation season. Donahue agrees to correct any deficiencies identified by the Watermaster or the Department within ten (10) days of receiving written notice from the Department, or within a reasonable time as specified by the Department. In the event that Donahue does not call for water at this location, Donahue may request that the watermaster lock the headgate. The measuring device will not be required if the headgate is locked by the Watermaster and water is not being diverted.
- 3) Payment of an agreed civil penalty in the amount of one hundred dollars (\$100) is payable to the Idaho Department of Water Resources within ten (10) days of the execution of this agreement, for the violation identified in the Notice of Violation dated July 10, 2003.
- 4) The Department suspends payment of nine thousand and nine hundred dollars (\$9,900) of the originally proposed civil penalty. This penalty or any portion may be re-imposed for Donahue's failure to fully comply with this agreement, including diversion of water without acceptable lockable controlling works and measuring device.
- 5) This agreement does not limit the Department or the watermaster of Water District 34 to seek future compliance or regulation of said water use for other issues not directly related to the unauthorized uses that occurred this year.

Dated this _____ day of _____, 2003.

Tim Luke, Manager
Water Distribution Section
Idaho Department of Water Resources

CONSENT

Respondent Terrence Donahue, on behalf of himself and Carol Donahue, acknowledge, in general, the facts set forth during the conference and accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Signed this _____ day of _____, 2003.

Terrence Donahue

Carol Donahue